

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PATRICIA ROBERTSON

Claimant

VS.

GREAT CLIPS FOR HAIR

Respondent

AND

AMERICAN FAMILY MUTUAL INSURANCE CO.

Insurance Carrier

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Docket No. 225,337

ORDER

Both claimant and respondent requested Appeals Board review of Administrative Law Judge Robert H. Foerschler's April 25, 2000, Award. The Appeals Board heard oral argument on October 4, 2000.

APPEARANCES

Claimant appeared by her attorney, John E. Redmond of Kansas City, Missouri. Respondent and its insurance carrier appeared by their attorney, Joseph R. Ebbert of Kansas City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in Award. Additionally, the parties agree the February 27, 1998, deposition testimony of the claimant should be listed and made a part of the record.

ISSUES

The Administrative Law Judge found claimant suffered injuries to her bilateral upper extremities while performing repetitive, hand-intensive work duties while employed by the respondent through November 22, 1995. Work disability was not an issue. The

Administrative Law Judge awarded claimant a 12 percent permanent partial general disability based on permanent functional impairment.¹

On appeal, respondent and its insurance carrier contend, first, that claimant failed to prove she suffered an accidental injury that arose out of and in the course of her employment with respondent. Second, they argue that claimant's appropriate accident date is not November 22, 1995, but is the date claimant returned to work in September 1994 after recovering from bilateral carpal tunnel syndrome injuries that are not part of this claim. Third, they contend the claim is barred because claimant failed to serve respondent with a timely written claim for compensation. Fourth, if the claim is found compensable, they argue claimant is entitled to only a one percent permanent partial general disability because claimant's preexisting functional impairment rating, as the result of previous carpal tunnel syndrome injuries, is required to be deducted to reduce the award.² Fifth, if the claim is found compensable, they contend the respondent should not be ordered to pay as an authorized medical expense the statement from Research Belton Hospital because the claimant did not present sufficient foundation testimony to prove the medical charge was for treatment of claimant's trigger finger condition.

In contrast, claimant requests the Appeals Board to affirm the 12 percent permanent partial general disability award. But claimant contends the award should be modified because she proved she was entitled to 24.29 weeks of temporary total disability compensation instead of the 17 weeks awarded by the Administrative Law Judge. Additionally, the claimant requests the Appeals Board to itemize in its Order all the past medical expenses and designate those expenses as authorized medical expenses for respondent to pay which includes the Research Belton Hospital statement in the amount of \$1,132.00.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Appeals Board makes the following findings and conclusions:

Did claimant suffer an accidental injury arising out of in the course of her employment?

Although listed in the respondent's application for review, the respondent did not argue this issue in its brief to the Appeals Board or at oral argument. The Appeals Board affirms the Administrative Law Judge's finding that claimant's bilateral trigger finger

¹See K.S.A. 44-510e(a).

²See K.S.A. 44-501(c).

condition resulted from claimant's hair styling repetitive work activities which included, among other duties, use of scissors, blow dryer, thinning shearers, and clippers.

What is claimant's appropriate accident date for her trigger finger condition?

The coverage of respondent's insurance carrier, American Family, commenced April 19, 1995, and concluded October 28, 1996. The insurance carrier argues that claimant's accident date is not November 22, 1995, but should be September of 1994 when claimant was returned to work in an accommodated job of working only 25 hours per week. The insurance carrier cites two recent Court of Appeals cases that hold the last day worked rule does not always determine claimant's accident date in a repetitive trauma case.³

The Administrative Law Judge found claimant's accident date was November 22, 1995, the date claimant was taken off work because of her trigger finger condition and her need for surgery to correct the condition. When claimant could not obtain respondent's insurance carrier's permission for the surgery, she returned to full-time work on March 8, 1996, but managing the salon instead of performing hair styling full time. Nevertheless, claimant's trigger finger condition remained symptomatic. Because of those continuing symptoms, respondent's owner referred claimant for medical treatment with hand surgeon John Michael Quinn, M.D.

Dr. Quinn first saw claimant on June 3, 1996. He found claimant with right palm pain and triggering in her right index, ring, and small fingers. Additionally, to a lesser degree, triggering was found in claimant's left ring and small fingers. Dr. Quinn determined claimant needed release surgery for her continuing trigger finger condition. But respondent's insurance carrier refused coverage. Claimant, however, decided to go ahead with surgery and to have her private health insurance carrier pay for the surgery.

On July 3, 1996, Dr. Quinn performed surgery to release claimant's right index, long, and ring fingers. Dr. Quinn also injected claimant's left long and ring triggering fingers.

When claimant returned to work for respondent after surgery, she returned to work not as a full-time hair stylist or salon manager but as respondent's human resource manager. Claimant worked in this capacity until she voluntarily left her employment with respondent on January 31, 1998.

The Appeals Board affirms the Administrative Law Judge's conclusion that claimant's appropriate accident date is November 22, 1995, the date Dr. Ketchum took

³ See Lott-Edwards v. Americold Corp., 27 Kan. App. 2d ___, 6 P.3d 947 (2000) and Cozad v. Boeing Military Airplane Co., 27 Kan. App. 2d 206, 2 P.3d 175 (2000).

claimant off work for surgery. Thereafter, claimant never returned to her regular job of hair styling but returned to a salon manager job and then eventually, after she had surgery for her right trigger finger condition, returned to a human resource manager job. During this period, she did, however, continue to do some hair styling. When claimant did the hair styling, she continued to be symptomatic, even after she voluntarily quit on January 31, 1998.

Claimant's appropriate accident date is November 22, 1995. Because respondent's insurance carrier would not authorize the surgery, respondent then returned claimant to a job managing the salon instead of performing the repetitive hair styling duties full time. November 22, 1995, was claimant's last day she worked on her regular duties before she was returned to an accommodated job that was substantially different than the job she was performing that was causing her injury.⁴

Respondent's argument that claimant's accident date is September 1994 is misplaced because that was the time claimant returned to hair styling, even though she worked only 25 hours per week. Also, this accommodation was not because of her trigger finger condition but because of her previous carpal tunnel syndrome condition and surgery.

**Did claimant serve respondent with a
timely written claim for compensation?**

The parties, in their briefs and in their argument before the Appeals Board, agree the respondent failed to file the required employer's accident report with the Division within 28 days of the claimant's November 22, 1995, accident date.⁵ The parties also agree the first time claimant served respondent with a written claim for compensation for the November 22, 1995, accident was on December 30, 1996.

Accordingly, since the employer did not file an employer's accident report within 28 days, then the claimant's time to serve the respondent with a claim for compensation was one year from the accident date, suspension of payment of disability compensation, or the last medical treatment authorized by the employer.⁶ Respondent contends this claim is barred because the claimant did not serve a written claim for compensation upon the respondent until December 30, 1996, more than one year after the November 22, 1995, accident date.

Claimant testified and her testimony is uncontradicted that respondent's owner referred her to Dr. Quinn for medical treatment of her trigger finger condition. Claimant first

⁴See Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999).

⁵See K.S.A. 44-557(a).

⁶See K.S.A. 44-557(c).

saw Dr. Quinn on June 3, 1996. Although respondent's insurance carrier refused to pay for such medical treatment, the Appeals Board concludes the medical treatment was authorized by the respondent. Claimant remained under Dr. Quinn's care and treatment until Dr. Ketchum was designated the authorized physician in January of 1999.

The Appeals Board, therefore, affirms the Administrative Law Judge's conclusion that claimant served a timely written claim for compensation on the respondent on December 30, 1996, because the claim was served within one year from the last medical treatment authorized by the respondent.

What is the nature and extent of claimant's disability?

Since work disability was not an issue, claimant's permanent partial general disability award is limited to her permanent functional impairment.⁷ Dr. Ketchum was the only physician to express an opinion on claimant's permanent functional impairment as a result of her trigger finger condition.

Dr. Ketchum attributed claimant's trigger finger condition of both hands to claimant's repetitive work activities while employed by the respondent. After Dr. Quinn's July 3, 1996, release surgery for claimant's right hand trigger finger condition and Dr. Ketchum's April 5, 1999, release surgery for the left hand trigger finger condition, Dr. Ketchum was requested to express an opinion on claimant's permanent impairment of function as a result of her work-related trigger finger injuries. In accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, Dr. Ketchum assessed claimant with a 10 percent permanent functional impairment of each upper extremity and combined those upper extremity impairments for a 12 percent whole body functional impairment rating.

Respondent contends the 11 percent whole body functional impairment rating, that Dr. Ketchum assessed on January 3, 1995, after claimant's bilateral carpal tunnel releases, is required by K.S.A. 1995 Supp. 44-501(c) to be deducted from the 12 percent functional impairment rating reducing the claimant's award for her trigger finger injuries to a one percent permanent partial general disability.

⁷See K.S.A. 44-510e(a).

K.S.A. 44-501(c) provides as follows:

The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

The Appeals Board finds Dr. Ketchum's 11 percent whole body permanent functional impairment rating opinion made in 1995 related only to claimant's bilateral carpal tunnel syndrome condition and was not related to the claimant's subsequent trigger finger condition. Dr. Ketchum was specific in his testimony that claimant's current trigger finger condition was caused by "repetitive flexion and extension of the fingers after her release to return to work." He further testified,

Furthermore, the trigger finger condition developed independently of her carpal tunnel conditions in that carpal tunnel syndrome is not a prerequisite for the development of trigger finger. Therefore, the trigger finger complaints are a new and distinct condition and constitute new injuries separate from the carpal tunnel condition.

Also, Dr. Ketchum testified that the permanent functional impairment he assessed for claimant's trigger finger condition was in addition to any permanent functional impairment assessed for the preexisting carpal tunnel syndrome condition.

The Appeals Board concludes the record has failed to prove that claimant's current disability is the result of an aggravation of a preexisting condition. The functional impairment from claimant's trigger finger condition has no relationship to the functional impairment from her carpal tunnel syndrome condition. Accordingly, the permanent partial general disability award for the trigger finger condition is not required to be reduced by the permanent functional impairment assessed for the unrelated preexisting carpal tunnel syndrome condition.

**How many temporary total disability
weeks is claimant entitled?**

The Administrative Law Judge awarded claimant 17 weeks of temporary total disability compensation at the rate of \$326.00 per week for a total of \$5,542.00. Claimant claims she is entitled to 24.29 weeks of temporary total compensation at the rate of \$326.00 per week for a total of \$7,918.54. At oral argument, the respondent did not dispute claimant's contention in regards to the temporary total disability weeks if the Appeals Board found the claim to be compensable. The Appeals Board concludes the Administrative Law Judge's Award should be modified to award claimant temporary total disability compensation in the amount of 24.29 weeks at the rate of \$326.00 per week for a total of \$7,918.54.

**What past medical expenses should be paid by the
respondent as authorized medical expenses?**

The Administrative Law Judge listed in the Award the past medical expenses claimant had offered into the record for respondent to pay as authorized medical expenses for claimant's treatment of her trigger finger condition. The Administrative Law Judge ordered the respondent to pay those expenses as authorized medical expenses.

The claimant, however, contends the Administrative Law Judge's Award did not specifically identify the past medical expenses to be paid by the respondent. Therefore, the claimant requests the Appeals Board to specifically list in its Order those expense for the respondent to pay.

But respondent contends only the \$1,132.00 medical statement from Research Belton Hospital should not be ordered paid by respondent as an authorized medical expense. The respondent argues claimant failed to present adequate foundation for the admission of this statement into the record to prove that the medical services provided were reasonable and necessary treatment for claimant's trigger finger condition.

The Appeals Board disagrees with the respondent's contention and finds that Dr. Ketchum testified that, after he examined claimant on October 4, 1995, he sent claimant for steroid therapy, three times a week for three weeks at Research Belton Hospital. Dr. Ketchum identified Research Belton Hospital's charges as reasonable and necessary for the treatment of claimant's trigger finger condition.

The Appeals Board concludes that respondent should be ordered to pay all past medical expenses, incurred by the claimant for treatment of her trigger finger condition, as authorized medical expenses. Those medical expenses listed in Award are ordered paid which include the Research Belton Hospital statement in the amount of \$1,132.00. Some medical treatment expenses were paid personally by the claimant and by claimant's private health care insurance carrier. The Appeals Board also orders respondent to reimburse claimant for any medical treatment expenses that were personally paid by the claimant upon presentation of proper proof of payment of those expenses. Respondent is also ordered to reimburse claimant's private health care insurance carrier for any medical expenses it paid for treatment of claimant's trigger finger conditions.

The Appeals Board adopts and incorporates into this Order the findings and conclusions set forth in the Administrative Law Judge's Award that are not inconsistent with the above findings and conclusions.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Robert H. Foerschler's April 25, 2000, Award should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Patricia Robertson, and against the respondent, Great Clips for Hair, and its insurance carrier, American Family Mutual Insurance Company, for an accidental injury which occurred on November 22, 1995, and based upon an average weekly wage of \$498.47.

Claimant is entitled to 24.29 weeks of temporary total disability compensation at the rate of \$326.00 per week or \$ 7,918.54, followed by 48.69 weeks of permanent partial disability compensation at the rate of \$326.00 per week or \$15,872.94 for a 12% permanent partial general disability, making a total award of \$23,791.48, which is all due and owing less any amounts previously paid.

As found above, respondent is ordered to pay as authorized medical all past medical expenses incurred by claimant as a result of treatment for her work-related trigger finger condition.

All remaining orders contained in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John E. Redmond, Kansas City, MO
Joseph R. Ebbert, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director